



3-1408  
I Fw AFH

PTO/SB/21 (04-07)

Approved for use through 09/30/2007. OMB 0651-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE  
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

		Application Number	09/827,509 (Conf. No. 6107)
		Filing Date	April 5, 2001
		First Named Inventor	John Hindman
		Art Unit	3714
		Examiner Name	Corbett B. Coburn
Total Number of Pages in This Submission		Attorney Docket Number	ODS/037

### ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	Appeal Brief Under 37 C.F.R. § 41.37 with claims Appendix A, Evidence Appendices B-D, and Related Proceedings Appendix; Authorization to Charge Deposit Account; and Return Postcard.
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Reply to Missing Parts/Incomplete Application		
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		
Remarks		
The Director is hereby authorized to charge payment of any fees required in connection with filing of these papers to Deposit Account No. 06-1075, Order No. 003043-0037. A duplicate copy of this letter is transmitted herewith.		

### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Ropes & Gray LLP Customer No. 75563		
Signature			
Printed name	Brian E. Mack		
Date	March 12, 2008	Reg. No.	57,189

### CERTIFICATE OF EXPRESS MAILING -Express Mail Label No: EM014767282US

I hereby certify that this correspondence is being deposited with the United States Postal Service "EXPRESS MAIL POST OFFICE TO ADDRESSEE" under 37 C.F.R. 1.10 on the date indicated above and is addressed to: Mail Stop - APPEAL BRIEFS, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Signature		
Typed or printed name	SARAH SCHLIE	Date
		3/12/08



Express Mail Label No.  
EM014767282US

PATENTS  
ODS-37

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants : John Hindman et al.

Application No. : 09/827,509 Confirmation No. : 6107

Filed : April 5, 2001

For : SYSTEMS AND METHODS FOR PROVIDING THE  
PROJECTED EFFECTS OF WAGERS ON  
PARIMUTUEL POOLS

Art Unit : 3714 03/17/2008 SSANDARA 00000009 061075 09827509

Examiner : Corbett B. Coburn 01 FC:1255 2230.00 DA

Mail Stop Appeal Briefs - Patents 03/17/2008 SSANDARA 00000009 061075 09827509  
Hon. Commissioner for Patents  
P.O. Box 1450 02 FC:1402 510.00 DA  
Alexandria, Virginia 22313-1450

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Sir:

Appellants are filing this Appeal Brief in support of the August 15, 2007 Notice of Appeal from the rejection of claims 1-31 in the final Office Action dated May 15, 2007.

Appellants hereby petition for a five-month extension of time under 37 C.F.R. § 1.136(a) for filing this Appeal Brief. With the extension of time, this Appeal Brief is due on or before March 15, 2008. The Director is hereby authorized to charge \$2230.00 to Deposit Account No. 06-1075 (Order No. 003043-0037) in payment of the extension of time fee required under 37 C.F.R. § 1.17(a)(4).

Appellants request that the appeal brief filing fee required under 37 C.F.R. § 41.20(b)(2) that was already paid in connection with the August 23, 2006 Appeal Brief be

Adjustment date: 03/17/2008 SSANDARA  
08/25/2006 TBESHAW1 00000006 061075 09827509  
01 FC:1402 500.00 CR



Express Mail Label No.

EM014767282US

ODS-37

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants : John Hindman et al.  
Application No. : 09/827,509 Confirmation No.: 6107  
Filed : April 5, 2001  
For : SYSTEMS AND METHODS FOR PROVIDING THE  
PROJECTED EFFECTS OF WAGERS ON PARIMUTUEL  
POOLS  
Group Art Unit : 3714  
Examiner : Corbett B. Coburn

Mail Stop Appeal Briefs - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

New York, New York  
March 12, 2008

AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

Sir:

The Director is hereby authorized to charge \$2240.00 to Deposit Account No. 06-1075 (Order No. 003043-0037), in payment of the Appeal Brief filing fee required under 37 C.F.R. § 41.20(b)(2) (difference between previous Appeal Brief filing fee paid and new Appeal Brief filing fee is \$10.00) and the extension of time fee required under 37 C.F.R. § 1.17(a)(5).

The Director is hereby authorized to charge any additional fees that may be due in connection with this Appeal Brief, or credit any overpayment of the same, to Deposit Account No. 06-1075 (Order No. 003043-0037). A duplicate copy of this Authorization is transmitted herewith.

Respectfully submitted,

Brian E. Mack  
Agent for Appellants  
Reg. No. 57,189  
ROPES & GRAY LLP  
Customer No. 75563  
1211 Avenue of the Americas  
New York, NY 10036-8704  
Tel.: (212) 596-9000  
Fax.: (212) 596-9090

applied to this new appeal. Appellants note that the appeal brief filing fee under 37 C.F.R. § 41.20(b)(2) has increased from \$500.00 to \$510.00 after the filing of the August 23, 2006 Appeal Brief. Accordingly, the Director is hereby authorized to charge the difference of \$10.00 to Deposit Account No. 06-1075 (Order No. 003043-0037).

The Director is also hereby authorized to charge any additional fees that may be due in connection with this Appeal Brief, or credit any overpayment of the same, to Deposit Account No. 06-1075 (Order No. 003043-0037). A separate Authorization to Charge Deposit Account is enclosed for these purposes (in duplicate).

In view of the arguments and authorities set forth below, the Board should find the rejection of claims 1-31 to be in error, and the Board should reverse the rejection.

This Brief has the following appendices:

Claims Appendix

Appendix A: Copy of claims 1-31 involved in this appeal;

Evidence Appendices

Appendix B: Copy of the final Office Action dated May 15, 2007;

Appendix C: Copy of Nevada Gaming Commission Regulation 26, Pari-Mutuel Wagering (hereinafter "Regulation 26"); and

Appendix D: Copy of Mindes U.S. Patent No. 5,573,244 (hereinafter "Mindes").

Related Proceedings Appendix

None.

(i) Real Party in Interest

Appellants respectfully advise the Board that the real party in interest in the above-identified patent application is ODS Properties, Inc., a corporation organized and existing under the laws of the State of Delaware, and having an office and place of business at 6701 Center Drive West, Los Angeles, CA 90045, which is the assignee of this application.

(ii) Related Appeals and Interferences

Appellants respectfully advise the Board that there are no other appeals or interferences known to appellants, their legal representative, or their assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(iii) Status of Claims

Claims 1-31 are finally rejected in this application and are on appeal. Claims 32-62 have been cancelled.

(iv) Status of Amendments

There have been no amendments filed subsequent to the May 15, 2007 final Office Action.

(v) Summary of Claimed Subject Matter

Appellants' independent claim 1 is generally directed toward a method for providing the projected effects of wagering on parimutuel pools to a user in an

interactive wagering system (see, e.g., appellants' specification, page 3, lines 9-13). A user input is received that proposes a wager that is associated with at least one parimutuel pool (see, e.g., appellants' specification, page 3, lines 14-31). Based on the user input, information that affects the user's potential winnings is obtained, and the projected effect the user's proposed wager would have on the parimutuel pool is provided to the user without changing the at least one parimutuel pool (see, e.g., appellants' specification, page 23, lines 5-26).

Similarly, independent claim 17 is generally directed toward a method for providing projected effects of wagering on odds associated with a proposed wager. A user input is received to create a proposed wager that is associated with at least one parimutuel pool (see, e.g., appellants' specification; page 3, lines 14-31). Parimutuel pool information and current odds for the proposed wager are both obtained. What effect the proposed wager would have on the current odds is determined without changing the at least one parimutuel pool, and the projected odds are provided to the user (see, e.g., appellants' specification, page 23, line 27 - page 24, line 31).

(vi) Ground of Rejection to be Reviewed on Appeal

The ground of rejection to be reviewed on this appeal is the final rejection of claims 1-31 under 35 U.S.C. § 103(a) as being unpatentable over Regulation 26 alone or unpatentable over Regulation 26 in view of Mindes.

(vii) Argument

A. Regulation 26 Does Not Show or Suggest All of Appellants' Claimed Features Recited in Independent Claims 1 and 17

The Examiner contends in the May 15, 2007 final Office Action (hereinafter "Office Action") that independent claims 1 and 17 are both obvious in view of Regulation 26 alone. See Office Action, pp. 2-3.

According to the Examiner, independent claims 1 and 17 are obvious in view of Regulation 26 because "the odds and payout associated with a pari-mutuel wager must take into account all money wagered" (Office Action, p. 2). Also according to the Examiner, a logical consequence of this observation is that:

"[n]o system could possibly provide accurate odds information to the wagerer without following these [i.e., appellants' claimed] steps. Essentially, Applicant is attempting to patent providing accurate projected odds/payout information to the wagerer – thus precluding anyone else in the United States from providing accurate odds/payout information. This is overbroad." *Id.*

Appellants respectfully disagree. The Examiner is failing to recognize the difference between a "projected" effect of a "proposed" wager and the actual odds/payout of wagers that have been already placed. As discussed below, Regulation 26 does not address the projected effects of proposed wagers or even proposed wagers at all.

Rather, appellants' claimed invention is very specific. It provides the projected effect a proposed wager would have on a parimutuel pool (claim 1) or current odds (claim 17). In addition, the projected effect on the pool is provided to the user (claim 1), or the effect on

the current odds is determined (claim 17), without changing the at least one parimutuel pool. Therefore, appellants' claimed invention provides this projected effect to the user without incorporating the proposed wager information into the actual parimutuel pool associated with the wager, as would happen if the proposed wager were actually finalized and placed. This is a fundamental distinction between providing current odds of wagers that have been already placed (as described in Regulation 26) and providing the projected effect of a proposed wager to the user.

Regulation 26 merely provides that "[t]he totalisator shall calculate the total amounts in each pool and the amounts wagered on each entrant or combination from time to time as wagering progresses." Regulation 26 at 26.100(6). Thus, Regulation 26 requires that the totalisator be capable of periodically updating the parimutuel pool to reflect wagers that have been actually placed. Regulation 26, like the other art cited by the Examiner, does not show or even suggest providing any projected effect of a proposed wager to a user without changing the parimutuel pool, as recited by appellants' independent claims 1 and 17. Since Regulation 26 does not show or suggest this claimed feature, appellants submit that, for this reason alone, the 35 U.S.C. § 103(a) rejection should be overturned.

B. One Skilled in the Art Would Have No Reason to Modify Regulation 26 to Achieve Appellants' Claimed Invention

In the "Response to Argument" section of the Office Action, the Examiner contends that "if a person with

a substantial amount to wager wants to know what the odds will be if he bets, then he will have to follow the claimed method to calculate those odds" (Office Action, page 5). According to the Examiner, "there is simply no other way to calculate those odds." *Id.* Appellants respectfully disagree.

Initially, appellants submit there are many ways for a "wagerer" to determine the projected effect of a proposed wager without following appellants' claimed methods. For example, a wagerer can mentally estimate the projected effect of a proposed wager based on such factors as the total pool size and the proposed wager amount. Mental estimation of the projected effect of a proposed wager by a wagerer is not covered by appellants' claims. Alternatively, the wagerer can manually calculate the projected effect using pen and paper. Manual calculation of the projected effect of a proposed wager by a wagerer is also not covered by appellants' claims. In addition, the wagerer can use a separate electronic means to calculate the projected effect. This also would not be covered by appellants' claims.

Even if the projected effect is to be provided by an integrated, interactive wagering system, there are different ways to implement such a system. For example, a system can be designed to input a proposed wager into the parimutuel pool. The parimutuel pool and the corresponding odds would then be updated to reflect the proposed wager. The system could then allow the wagerer to proceed with the wager or withdraw the wager.

Appellants' claimed approach, in contrast, provides the projected effect of a proposed wager in an interactive wagering system *without changing the parimutuel*

pool. As recited by each of independent claims 1 and 17, information that affects the user's potential winnings (claim 1) or the current odds (claim 17) is obtained from the parimutuel pool. The projected effect of the proposed wager is provided or determined without changing the parimutuel pool. This claimed approach is different than incorporating the wager into the parimutuel pool as described above. As such, contrary to the Examiner's contention, appellants submit that there are several ways a wagerer could be provided with the projected effect of a proposed wager other than following appellants' claimed approach.

Even if there were only one way to determine the projected effect of a proposed wager, this fact alone should not militate against patentability. Appellants are entitled to claim their invention as broadly as the prior art permits. Since the Examiner has pointed to no reference (or combination of references) that shows or reasonably suggests providing the projected effect of a proposed wager to a user as claimed, appellants submit that the number of alternate solutions to this problem should be irrelevant to the Examiner's assessment of patentability.

What is missing in the Examiner's 35 U.S.C. § 103 rejection is some teaching, suggestion, motivation, or apparent reason why one skilled in the art would be inclined to modify the teachings of Regulation 26 to provide the projected effect of a proposed wager to a user without changing the parimutuel pool associated with the proposed wager. Appellants' claimed invention provides a novel approach for allowing users to be presented with, before their wagers are actually finalized or placed, the projected effect of these proposed wagers on one or more

parimutuel pools without changing the one or more parimutuel pools. Because the large majority of typical wagers would have no significant effect on the parimutuel pool, appellants submit that the claimed invention would be of limited use to the majority of wagerers. As such, the need for providing the projected effects of proposed wagers in most cases would be small. Because, at least in part, of this small need and the multiple ways to provide the projected effect of a proposed wager to a user, appellants' submit that there is an inadequate teaching, suggestion, motivation, or apparent reason for one skilled in the art at the time appellants' invention was made to modify Regulation 26 to provide the projected effect of a proposed wager to a user without changing the parimutuel pool. For this additional reason, appellants submit that the 35 U.S.C. § 103(a) rejection should be overturned.

C. The Dependent Claims

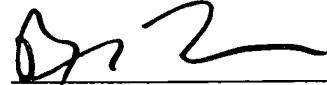
The dependent claims were rejected under 35 U.S.C. § 103(a) as being obvious from Regulation 26 alone or Regulation 26 in view of Mindes. Because each of the dependent claims includes all the features of one of independent claims 1 and 17, appellants submit that the rejection of these claims should also be overturned.

D. Conclusion

For the foregoing reasons, appellants submit that Regulation 26 or the combination of Regulation 26 and Mindes does not render any of appellants' claims 1-31 obvious.

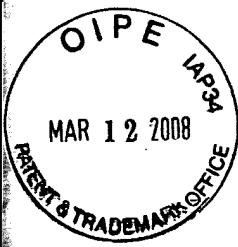
The Examiner's rejection of these claims should, therefore, be reversed.

Respectfully submitted,



---

Brian E. Mack  
Registration No. 57,189  
Agent for Appellants  
Ropes & Gray LLP  
Customer No. 75563  
1211 Avenue of the Americas  
New York, NY 10036-8704  
Tel.: (212) 596-9000  
Fax : (212) 596-9090



(viii) Claims Appendix

CLAIMS APPENDIX A  
CLAIMS ON APPEAL

1. A method for providing projected effects of wagering on parimutuel pools to a user in an interactive wagering system, comprising:

receiving user input to propose a wager that is associated with at least one parimutuel pool;

obtaining information that affects the user's potential winnings from the at least one parimutuel pool based on the user input; and

providing what projected effect the user's proposed wager would have on the parimutuel pool to the user without changing the at least one parimutuel pool.

2. The method of claim 1, wherein the user input comprises a selection of a wager amount.

3. The method of claim 1, wherein the user input comprises a selection of a wager type.

4. The method of claim 1, wherein the user input comprises a selection of a race track.

5. The method of claim 1, wherein the user input comprises a selection of a race.

6. The method of claim 1, wherein the user input comprises a selection of at least one horse.

7. The method of claim 1, wherein the information obtained comprises parimutuel pool information.

8. The method of claim 1, wherein the information obtained comprises current odds for the wager.

9. The method of claim 1, wherein the projected effect the proposed wager would have on the parimutuel pool comprises projected odds for the proposed wager.

10. The method of claim 1, wherein the interactive wagering system further comprises a user interface that includes a telephone.

11. The method of claim 10, wherein the projected effect is announced to the user.

12. The method of claim 10, wherein the projected effect is displayed to the user.

13. The method of claim 1, wherein the interactive wagering system further comprises a user interface that includes a set top box.

14. The method of claim 13, wherein the projected effect is displayed to the user.

15. The method of claim 1, wherein the interactive wagering system further comprises a user interface that includes a computer.

16. The method of claim 15, wherein the projected effect is displayed to the user.

17. A method for providing projected effects of wagering on odds associated with a proposed wager in an interactive wagering system, comprising:

receiving user input to create the proposed wager that is associated with at least one parimutuel pool;

obtaining information from the at least one parimutuel pool;

obtaining current odds for the proposed wager;

determining what effect the proposed wager would have on the current odds without changing the at least one parimutuel pool; and

providing projected odds to the user.

18. The method of claim 17, wherein the user input comprises a selection of a wager amount.

19. The method of claim 17, wherein the user input comprises a selection of a wager type.

20. The method of claim 17, wherein the user input comprises a race track.

21. The method of claim 17, wherein the user input comprises a race.

22. The method of claim 17, wherein the user input comprises at least one horse.

23. The method of claim 17, wherein the interactive wagering system further comprises a user interface that includes a telephone.

24. The method of claim 23, wherein the effect is announced to the user.

25. The method of claim 23, wherein the effect is displayed to the user.

26. The method of claim 17, wherein the interactive wagering system further comprises a user interface that includes a set top box.

27. The method of claim 26, wherein the effect is displayed to the user.

28. The method of claim 26, wherein the projected odds, which include the projected effects of placing the proposed wager, are displayed in a window.

29. The method of claim 28, wherein the window is configured to be toggled between displaying the current odds and the projected odds associated with the proposed wager.

30. The method of claim 17, wherein the interactive wagering system further comprises a user interface that includes a computer.

31. The method of claim 30, wherein the effect is displayed to the user.

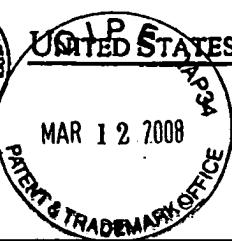
(ix) Evidence Appendix

EVIDENCE APPENDIX B  
COPY OF THE FINAL OFFICE ACTION DATED MAY 15, 2007



## UNITED STATES PATENT AND TRADEMARK OFFICE

MAR 12 2008



UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,509	04/05/2001	John Hindman	ODS-37	6107

1473 7590 03/15/2007  
FISH & NEAVE IP GROUP  
ROPE & GRAY LLP  
1211 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036-8704

RECEIVED

MAY 23 2007

ROUTED TO: JMG/BM  
RETRANSMITTED TO:  
MAIL BY:

EXAMINER	
COBURN, CORBETT B	
ART UNIT	PAPER NUMBER
3714	
MAIL DATE	DELIVERY MODE
05/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

File No. ODS/037  
Action Desc cept to final da  
Due Date Aug. 15, 2007  
By JMG

File No. ODS/037  
Action Desc Notice of appeal  
Due Date Aug. 15, 2007  
By JMG



## Office Action Summary

Application No.	Applicant(s)	
09/827,509	HINDMAN ET AL.	
Examiner	Art Unit	
Corbett B. Cobum	3714	

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.138(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 19 March 2007.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-31 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-31 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_



MAR 12 2008

Application/Control Number: 09/827,509

Art Unit: 3714

Page 2

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9 & 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nevada Gaming Commission Regulation 26, Pari-Mutuel Wagering.

Claims 1, 7, 9: Applicant has claimed a method of projected effect of a proposed wager on pari-mutuel pools to a user. As Reg. 26 makes absolutely crystal clear, the odds and payout associated with a pari-mutuel wager must take into account all money wagered. Thus, in order to accurately determine the odds a wagerer will receive, any system must: (1) receive user input to propose a wager that is associated with at least one pari-mutuel pool; (2) obtain information that affects the user's potential winnings (i.e., pari-mutuel pool information -- current pool amount, commission, taxes, etc.) from the pool over some type of communications link; and provide the projected effect the user's proposed wager would have on the pari-mutuel pool to the user – without changing the pool itself. No system could possibly provide accurate odds information to the wagerer without following these steps. Essentially, Applicant is attempting to patent providing accurate projected odds/payout information to the wagerer – thus precluding anyone else in the United States from providing accurate odds/payout information. This is overbroad.

It is well known that wagers desire to know how much they will be paid if they make a wager (i.e., projected odds/payout). Furthermore, it is well known that large wagers can have significant effects on the potential payout. This is a direct result of the method by which payouts of pari-mutuel pools are determined. It would have been obvious to one of ordinary skill in the art at the time of the invention to have a system (1) receive user input to propose a wager that is associated with at least one pari-mutuel pool; (2) obtain information that affects the user's potential winnings (i.e., current pool amount, commission, taxes, etc.) from the pool over some type of communications link; and provide the projected effect the user's proposed wager would have on the pari-mutuel pool to the user in order to calculate the projected odds/payout information as described in Reg. 26 and provide the user with information on how much they will be paid if they make a wager.

**Claims 2-6, 18-22:** As is made clear by Reg. 26, the wager amount, wager type, track, race & horse are all critical components in determining the payout. The wager type, track, race & horse identify the pari-mutuel pool. The amount is needed to calculate the gross amount wagered.

**Claim 8:** Reg. 26 requires those accepting pari-mutuel wagers to provide current odds. 26.100(6). It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the current odds in order to comply with gaming regulations.

**Claim 17:** See claims 1 & 8.

3. Claims 10-16 & 23-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reg. 26 as applied to claim 1 or 17 in view of Mindes (US Patent Number 5,842,921).

**Claims 10, 23:** Reg. 26 teaches the method of determining accurate odds/payout information in pari-mutuel wagering. Reg. 26 does not, however, teach details of how this information might be provided to a wagerer. Mindes teaches a practical system for displaying proposed odds/payout information for proposed wagers including the potential effect the proposed wager would have on the pari-mutuel pool. (Col 14, 57 – Col 15, 33) Mindes teaches providing input via telephone. (Col 6, 29-32) The telephone is a ubiquitous device – virtually every household has one. This allows access to the system by more people, thus increasing the possible profits. It would have been obvious to one of ordinary skill in the art at the time of the invention to have a telephone as a part of the user interface in order to provide an appropriate input device while ensuring that most people have access to the system, thus increasing profit potential.

**Claims 11, 12, 14, 16, 24, 25, 27, 31:** As discussed in connection with claim 1, it is obvious to display/announce the projected effect of the proposed wager to the user in order to provide information on how much they will be paid if they make a particular wager.

**Claims 13, 26:** Mindes teaches a set top box (322) as a user interface.

**Claims 15, 30:** Mindes teaches a computer (302) as a user interface.

**Claim 28:** Mindes teaches displaying information about the game in windows. (Col 6, 33-38) While not disclosed in connection with a set top box, these windows serve to separate the information concerning different races, thus reducing player confusion. It would have been obvious to one of ordinary skill in the art at the time of the invention to

have displayed the projected effects information in a window on a television in order to separate the information concerning different races, thus reducing player confusion.

**Claim 29:** Mindes teaches displaying information about the game, including odds, in windows. (Col 6, 33-38) Mindes teaches that the window may occupy the entire screen. It is well known to toggle between windows that fill the entire screen.

*Response to Arguments*

4. Applicant's arguments filed 19 March 2007 have been fully considered but they are not persuasive.
5. Applicant argues that Examiner fails to take into account the difference between proposed wagers and actual wagers. This is not the case. Examiner's contention is that if a person with a substantial amount to wager wants to know what the odds will be if he bets, then he will have to follow the claimed method to calculate those odds. The way in which the odds are calculated render the method of calculating odds on proposed wagers obvious. (Actually, the method of calculating the odds is defined by the reference. The obvious part is that someone would wish to know what the odds will be if he places a substantial bet.)
6. Examiner cannot agree with Applicant's arguments that following the well-known method used to calculate the odds in pari-mutuel wagering to calculate the odds of a proposed wager is novel. If someone asked, "What will the odds be if I place this bet?", one of ordinary skill would answer, "Here's how to calculate that." And the way they would calculate those odds is to follow the procedures Applicant is attempting to patent. Why? Because there is simply no other way to calculate those odds.

*Conclusion*

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

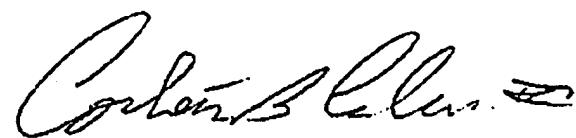
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corbett B. Coburn whose telephone number is (571) 272-4447. The examiner can normally be reached on 8-5:30, Monday-Friday, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3714

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CORBETT B. COBURN  
PRIMARY EXAMINER

Corbett B. Coburn  
Primary Examiner  
Art Unit 3714

EVIDENCE APPENDIX C  
NEVADA GAMING COMMISSION REGULATION 26,  
PARI-MUTUEL WAGERING



## REGULATION 26

### PARI-MUTUEL WAGERING

#### GENERAL

- 26.010 Policy.
- 26.020 Scope.
- 26.030 Definitions.
- 26.040 Licensing.
- 26.050 Facilities and location.
- 26.060 Commission and taxes.
- 26.070 Accounting.

#### MANAGEMENT OF PARI-MUTUEL

- 26.080 Operation of pari-mutuel facilities.
- 26.090 Mutual manager.

#### COMPUTATION EQUIPMENT AND OPERATION

- 26.100 Electronic totalizator.
- 26.110 Totalizator failure.
- 26.120 Manual computation.

#### WAGERS

- 26.130 Wagers.
- 26.140 Prohibited wagers.
- 26.150 Pari-mutuel tickets.
- 26.160 Wagers by messenger.
- 26.170 Refunds on coupled entries.
- 26.180 Restriction on wagering, scratch of entrant.
- 26.190 Effect of certain wagers.
- 26.200 Daily doubles.
- 26.210 Separate pools.

#### COMPUTATIONS AND PAYOFFS

- 26.220 Payoff calculations.
- 26.230 Payoff-daily double.
- 26.240 Payoff-quinella.
- 26.250 Payoff-exacta.
- 26.260 Payment on wagers.
- 26.270 Errors in posting.
- 26.280 Payment for errors.

#### MISCELLANEOUS

- 26.290 Gaming employees.
- 26.300 Access to premises and records.
- 26.310 Records and reports.
- 26.320 Disciplinary actions.

#### GENERAL

**26.010 Policy.** It is the policy of the commission and board that pari-mutuel betting on sporting events is materially different from other types of gaming and that the public health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada require stringent regulation of pari-mutuel wagering conducted in conjunction with sporting events; accordingly, pursuant to NRS 464.020(2), licensees operating pari-mutuel wagering facilities on sporting events and races, except horse and dog racing, are required to comply with the following regulation in addition to any regulation applicable to gaming licenses in general.  
(Adopted: 3/75.)

**26.020 Scope.** Regulation 26 shall govern all pari-mutuel wagering for which a license has been granted by the Nevada gaming commission under chapter 464 of the Nevada Revised Statutes. The provisions of chapter 463 of Nevada Revised Statutes and the regulations promulgated thereunder shall apply when not in conflict with Regulation 26.  
(Adopted: 3/75.)

**26.030 Definitions.** The following definitions shall apply throughout this regulation, and where not inconsistent elsewhere, shall apply to all other regulations of the Nevada gaming commission.

1. Breakage: Odd cents over a multiple of 10 cents arising from the computation of odds and payouts.

2. Commission: An amount retained and not distributed by the licensee from the total sums wagered on an event. The term does not include breakage.
3. Daily double: A wager requiring the selection of the winners of two separate program events designated by the licensee as a daily double.
4. Entry: Two (2) or more entrants competing in a given event and coupled because of common ties.
5. Exacta: The selection, in order of finishing, of the entrants finishing first and second in a given event.
6. Field: All the entrants in an event whose assigned numerical designation exceeds one less than the numbering capacity of the post positions on the tote board.
7. Gross pool: The total amount of money wagered on the outcome of a particular event without any deduction therefrom.
8. Handle: Gross amount of money risked in pari-mutuel wagering.
9. Licensee: As used herein, a person to whom a pari-mutuel wagering license has been issued by the Nevada gaming commission.
10. Net pool: Gross pool less commission deducted.
11. Pari-mutuel: A system of wagering on a race or sporting event whereby the winners divide the total amount bet, after deducting commission, fees, and taxes, in proportion to the amount individually wagered.
12. Profits: Net pool less the gross amount wagered upon a given entrant in a particular instance.
13. Quinella: The selection of the entrants finishing first and second in any order in any given event.
14. Entrant: A participant in a race, sporting event or contest upon which a wager may be placed as to the participants' finishing position in the event.
15. Event: An individual race, game or contest wherein pari-mutuel wagering is conducted upon the competing entrants.
16. Win, place, show: Refers to the entrants respectively placing first, second and third in the outcome of an event; also refers to the respective wagers or pools.

(Adopted: 3/75.)

#### **26.040 Licensing.**

1. A nonrestricted gaming license under the authority of chapter 463, and a pari-mutuel license under the authority of chapter 464 of the Nevada Revised Statutes, and any other applicable state license or permit shall first be required to conduct pari-mutuel wagering. The pari-mutuel license shall be applied for and issued in the same manner as a non-restricted gaming license.
2. A pari-mutuel license shall be issued only on events conducted, owned, operated and controlled by the licensee unless waived by the Nevada gaming commission. Each sporting event shall be deemed a separate operation requiring a separate license which shall issue only on events operated in accordance with the rules and regulations of the Nevada gaming commission and the state gaming control board.

(Adopted: 3/75.)

**26.050 Facilities and location.** Unless otherwise permitted, no other form of gaming shall be conducted in an area containing pari-mutuel betting; such area shall be within a well-defined enclosure to which no direct ingress or egress may be made to or from a contiguous area containing other forms of gaming; however, pari-mutuel wagering may be held in the same building where other gaming is permitted.

(Adopted: 3/75.)

#### **26.060 Commissions and taxes.**

1. The licensee shall be entitled to deduct from a gross pool a commission not to exceed 13 percent of the pool.
2. From the commission deducted, the licensee shall pay to the Nevada gaming commission a tax equal to 2 percent of the sum of all pari-mutuel wagers. The tax due shall not be reduced by minus pools of otherwise.
3. The above tax as imposed by NRS 464.040(2) shall be paid quarterly on or before the last day of the first month of the next succeeding calendar quarter and accompanied with a report of all taxable receipts for the quarter.

(Adopted: 3/75.)

#### **26.070 Accounting.**

1. Each licensee shall prepare and maintain in a manner suitable to the board, complete and accurate accounting records, information and data which shall be generated by an approved

computer system and which reflects the following on a daily basis for each event upon which pari-mutuel wagering was held:

- (a) Gross amount wagered on each event;
- (b) Gross and net amounts of each pool;
- (c) Commissions deducted;
- (d) Tax and breakage on each pool;
- (e) Number and value of tickets sold on each pool;
- (f) Final odds;
- (g) Payoff prices; and
- (h) The amount paid on all winning pari-mutuel tickets.

2. A daily reconciliation of all cash received and paid on each pool of each event shall be recorded along with the cash count of the money room.

3. The applicable provisions of Regulation 6 shall apply.

(Adopted: 3/85.)

#### MANAGEMENT OF PARI-MUTUEL

##### **26.080 Operation of pari-mutuel facilities.**

1. The pari-mutuel operation shall be conducted by the licensee under the control and supervision of a mutuel manager who, along with all ticket sellers, cashiers, and money counters, shall be an employee of the licensee.

2. Should any portion of the mutuel operation be subcontracted to any person or entity other than the licensee, such arrangement shall first be approved by the board which may require such person or entity or their employees to be licensed.

3. All bettor or spectator complaints must be registered at an information window; a written report as to the substance and disposition of the complaint shall be made, and copy thereof delivered to the board as soon as reasonably practicable.

(Adopted: 3/75.)

##### **26.090 Mutuel manager.**

1. The general operation of the pari-mutuel shall be directed by a mutuel manager who shall have extensive experience in the operation of pari-mutuel wagering.

2. Total responsibility shall rest with the mutuel manager for:

- (a) The entire operation of pari-mutuel wagering in accordance with this regulation;
- (b) The correct computation of pools, odds, breakage, payouts, commissions, and taxes; and
- (c) The conduct of all persons directly or indirectly employed in the mutuel department.

3. Any emergency arising from the operation of the pari-mutuel, not covered by this regulation and requiring immediate action, shall be handled by the mutuel manager who shall make the necessary decisions and render a report to the board within 24 hours.

(Adopted: 3/75.)

#### COMPUTATION EQUIPMENT AND OPERATION

##### **26.100 Electronic totalizer.**

1. An electronic totalizer shall be used for each event upon which pari-mutuel wagering is conducted, unless written consent is given by the board to use different equipment or methods. The equipment must automatically register the total amount wagered in each mutuel pool; the total amount wagered on each participant in a game or race for win, place and show; the total amount wagered on each combination in a daily double, quinella or exacta, and shall print and issue a ticket representing each wager comprising each required total.

2. A license may not be issued until such tests as required and performed by the board have been made and the equipment conforms to the requirements of these regulations and the board; provided, however, a license may be conditionally issued based upon further testing of the equipment.

3. The licensee may be required to conduct such test as the board may prescribe from time to time upon totalizers and ancillary equipment.

4. Failure of the totalizer to meet the requirements as established by these regulations and the board shall be grounds for ordering the suspension of pari-mutuel wagering until such time as the deficiencies have been corrected.

5. The board shall issue a policy statement setting forth the standards required for the totalizer system.

6. The totalizer shall calculate the total amounts in each pool and the amounts wagered on each entrant or combination from time to time as wagering progresses. Operated in connection with the totalizer shall be one or more boards prominently displaying to the public the winning

odds on each entrant or combination during the progress of wagering at intervals of not more than 90 seconds between each complete change.

7. The totalizator shall be designed so that all ticket machines shall automatically lock and close upon the activation of the off bell which must be activated no later than the start of the event. In no case shall the machines be opened until after a declaration that the results of the event are official.

(Adopted: 3/75.)

#### **26.110 Totalizator failure.**

1. A report of any faulty operation of the totalizator or tote board shall be filed with the board within 24 hours following the malfunction.

2. Whenever the totalizator mechanism fails and is obviously unreliable as to the amounts wagered, all figures on the tote board so affected shall be removed immediately, and the payoff shall be compiled on the sum wagered in each pool as shown by the recapitulation of the sales registered by each individual ticket issuing machines. If an individual ticket issuing machine fails and a computer system is being employed, then the figures as stored in the computer shall be used to calculate the payoff. If the type of wagering equipment used renders this recapitulation impossible, all moneys wagered on the sporting event shall be refunded.

(Adopted: 3/75.)

#### **26.120 Manual computations.**

1. If payoff prices are computed manually, before posting the payoff prices of any pool for any event, each of the calculating sheets of such event shall be proved by the calculators and the winners verified. Such proof shall show payouts, breakage, and commission and, when totaled together, must equal the gross pool. All payslips must be checked with the calculating sheets as to winners and prices before being issued to cashiers, and all board prices shall be rechecked with a calculator before being released to the public. The above shall not apply if a computer system is used for the purposes of calculating payoffs.

2. If manual calculation of approximate odds is used, a complete and detailed handwritten record of each event shall be kept containing:

- (a) Each change in odds;
- (b) The percentage figures on the final reading; and
- (c) The actual possible payoff on each entrant.

3. Such records shall be retained for a period of 3 years.

(Adopted: 3/75.)

### **WAGERS**

**26.130 Wagers.** All pari-mutuel wagers shall be made only in cash, chips or tokens of the licensee and must be consummated on the pari-mutuel premises.

(Adopted: 3/75.)

#### **26.140 Prohibited wagers.**

1. No pari-mutuel ticket shall be sold to, or cashed for, a person under 21 years of age.

2. No employee of a mutuel department, officials, participants of a sporting event, or other employees on duty in the playing or spectator areas shall purchase or cash a pari-mutuel ticket; provided, however, the selling and cashing of pari-mutuel tickets for patrons by messengers employed by the licensee for that purpose may be allowed.

3. No mailed or telephone wagers from outside the pari-mutuel enclosure shall be permitted.

4. Resale of pari-mutuel tickets between individuals is prohibited and constitutes grounds for ejection from the premises wherein pari-mutuel wagering or the sporting event is conducted.

(Adopted: 3/75.)

#### **26.150 Pari-mutuel tickets.**

1. Pari-mutuel tickets shall evidence or contain:

- (a) A designation for each race, game or event;
- (b) Entrant or player number;
- (c) Race or game number;
- (d) Date; and
- (e) Amount wagered.

2. Pari-mutuel tickets shall be sold only through designated ticket windows prominently displaying the denomination and type of tickets sold.

(Adopted: 3/75.)

**26.160 Wagers by messenger.**

1. Wagers may be placed by messengers or runners who shall be employees of the licensee; the taking, placing and paying of wagers shall be done only within the enclosure wherein pari-mutuel wagering is conducted.

2. The following constitutes the minimum requirements for wagering permitted by this section:

(a) The wager of an individual bettor must be first recorded upon a sequentially pre-numbered duplicate betting slip indicating the type, number and cost of each bet, and the total bets and amounts wagered.

(b) The runner shall retain the original bet slip with the duplicate being held by the customer who shall tender the total money wagered; thereafter, the wager shall be placed and tickets issued at the pari-mutuel window, and the tickets returned to the customer in exchange for the duplicate slip.

(c) No wager is deemed to have been made until the runner has purchased the tickets indicated on the betting slips.

(d) The customer may tender a winning ticket to a runner for payment which must be made at a pari-mutuel window.

3. A runner shall not accept any wager which cannot reasonably be expected to be placed before the pari-mutuel machines are locked. Any moneys so received and not bet before the pari-mutuel machines are locked shall be returned to the customer.

(Adopted: 3/75.)

**26.170 Refunds on coupled entries.** When two or more entrants in an event are coupled on the same mutuel ticket, there shall be no refund unless all of the entrants so coupled are cancelled before the event begins.

(Adopted: 3/75.)

**26.180 Registration on wagering, scratch of entrant.**

1. When no more than five entrants start an event, show wagering on the event may be deleted or cancelled.

2. When no more than four entrants start an event, both place and show wagering on the event may be deleted or cancelled.

3. Wagering on an event may be prohibited when less than three entrants start an event and both entrants are coupled in an entry.

4. A refund shall be made of wagers placed on an entrant scratched before the betting has closed, except in the case of a player substitution in Jai Alai made in accordance with Regulation 27.

(Adopted: 3/75.)

**26.190 Effect of certain wagers.**

1. A wager on any one entrant in an entry shall be a wager on all such entrants.

2. A wager on any one entrant in a field shall constitute a wager on all entrants comprising the field.

(Adopted: 3/75.)

**26.200 Daily doubles.**

1. Except in the circumstances enumerated in section 26.250, no payoff shall be made on a ticket on which both entrants chosen have not in fact won their respective events.

2. No daily double wagering shall be allowed on events with entry or field entrants.

3. All daily double tickets shall be sold only from automatic double machines, and the daily double windows shall be closed and the machines locked at the start of the first event of the daily double.

(Adopted: 3/75.)

**26.210 Separate pools.** Quinella, exacta and daily double wagering shall individually constitute separate pools and not comprise or be a part of any other win, place, or show pool.

(Adopted: 3/75.)

**COMPUTATIONS AND PAYOFFS**

**26.220 Payoff calculations.**

1. The gross commission shall be first deducted from the gross amount wagered on each individual pool, viz., win, place, show, thereby providing a respective net pool.

2. Win pool (first place). The payoff amount per dollar wagered which shall include the gross dollar wagered on the winner, for each gross dollar wagered on the winner shall be determined

by dividing the net pool by the gross sum wagered on the winner. In the event of a tie for win, the payoff shall be figured in the same manner as a place pool.

3. Place pool (second place).

(a) The payoff amount per dollar wagered, which shall include the gross dollar wagered upon the winning entrant to place, shall be determined by dividing the gross amount wagered upon the winner to place into the sum of: the gross amount wagered upon the winner to place, plus one-half of the difference between the net pool for place and the combined sum wagered on the winning and placing entrants to place.

(b) The payoff amount per dollar wagered, which shall include the gross dollar wagered upon the placing entrant to place, shall be determined by dividing the gross amount wagered upon the placing entrant to place into the sum of: the gross amount wagered upon the placing entrant to place, plus one-half of the difference between the net pool for place and the combined sum wagered on the winning and placing entrants to place.

(c) In the event of a tie for place, one-half of the profits of the place pool shall be paid upon the winner, and the remaining one-half prorated equally among the entrants constituting the tie.

4. Show pool (third place).

(a) The payoff amount per dollar wagered, which shall include the gross dollar wagered upon the winning entrant to show, shall be determined by dividing the gross amount wagered upon such winning entrant to show into the sum of: the gross amount wagered on the winning entrant to show, plus one-third of the difference between the net pool for show and the combined sums wagered on the entrants which placed first, second, and third to show.

(b) The payoff amount per dollar wagered, which shall include the gross dollar wagered upon the second place entrant to show, shall be determined by dividing the gross amount wagered upon such entrant to show into the sum of: the gross amount wagered on the second place entrant to show, plus one-third of the difference between the net pool for show and the combined sums wagered on the entrants which placed first, second and third to show.

(c) The payoff amount per dollar wagered, which shall include the gross dollar wagered upon the third place entrant to show, shall be determined by dividing the gross amount wagered upon such entrant to show into the sum of: the gross amount wagered on the third place entrant to show, plus one-third of the difference between the net pool for show and the combined sums wagered on the entrants which placed first, second and third to show.

(d) In the event of a tie for show, one-third each of the profits of the show pool shall be paid upon the entrants placing first and second, and the remaining one-third prorated equally among the entrants constituting the tie.

(Adopted: 3/75.)

**26.230 Payoff—daily double.**

1. Except as provided below, or section 26.170 in case of refunds, the payoff on a winning daily double combination shall be made pursuant to sections 26.220(1) and (2).

2. When no ticket exists combining the winner of both events, the net pool shall be calculated and distributed as follows under the circumstances enumerated below:

(a) When the winners of both events have been selected individually, but not selected as a combination, the net pool shall be distributed as a place pool upon the winners of either event.

(b) When only one winner of the two events has been chosen, the net pool shall be paid as a win pool on the chosen winner.

(c) When no winner has been selected for either event, the net pool shall be distributed as a win pool to holders of tickets combining the entrants placing second.

3. When no ticket exists requiring distribution under subsections 1 or 2, or when the first event of the daily double is cancelled, the gross pool shall be distributed pro rata to those persons wagering on the daily double.

4. When the second event of a daily double is cancelled, the payoff shall be computed and distributed as a win pool upon the tickets covering the winner of the first event, and if no such ticket exists, the net pool shall be distributed as a win pool upon tickets covering the entrant which finished second in the first event. If no tickets exist covering the entrants placing first or second, the gross pool shall be distributed pro rata to those persons wagering on the daily double.

(Adopted: 3/75.)

**26.240 Payoff—quinella.**

1. Except in cases specified below, the winning combination in a quinella pool shall be computed and distributed in accordance with sections 26.220(1) and (2).

2. In case of a tie for first place between two entrants, the payoff shall be made upon tickets combining both entrants. In case of a tie for second place, the net pool shall be treated as a place

pool with the payoff made on the tickets combining the winning entrant and either of the two entrants finishing second.

3. When a tie for second place occurs and no ticket has been issued covering one of the two winning combination, the net pool shall be calculated and distributed as a win pool and the payoff made on the tickets covering the winning combination.

4. Should no ticket exist covering the winning combination of a quinella, the net pool shall be treated as a place pool and distributed equally among the tickets combining the entrants which place first or second with a non-placing entrant.

5. When tickets have been sold on only one of the first two finishers, the net pool shall be distributed as a win pool to holders of such tickets.

6. When no ticket exists requiring distribution under any of the foregoing subsections, the gross pool shall be distributed pro rata among the persons wagering on the quinella.

(Adopted: 3/75.)

#### **26.250 Payoff—exacta.**

1. Except for cases specified below, the winning combination in an exacta pool shall be computed and distributed in accordance with sections 26.220(2) and (3).

2. In case of a tie for first place by two entrants, the payoff shall be made only upon tickets combining both entrants. In the case of a tie for second place, the net pool shall be treated as a place pool and the payoff made on tickets combining the winning entrant with either of the two entrants finishing second.

3. When a tie for second place occurs and tickets are issued combining only one of the two possible winning combinations, the net pool shall be calculated and distributed as a win pool.

4. When no ticket is issued combining the winning combination of an exacta, the net pool shall be calculated and distributed as a place pool and distributed equally among the tickets combining the entrants which placed first or second with a non-placing entrant.

5. When tickets have been sold on only one of the first two finishers, the net pool shall be distributed as a win pool to holders of such tickets.

6. When no ticket exists requiring distribution under any of the foregoing subsections, the gross pool shall be distributed pro rata among the persons wagering on the exacta.

(Adopted: 3/75.)

#### **26.260 Payment on wagers.**

1. Payment of wagers will be made only on presentation of appropriate pari-mutuel tickets. Any claim by a bettor that a wrong ticket has been delivered to him at the mutuel ticket window must be made before leaving the window, and thereafter no such claim may be considered.

2. A licensee shall cash all valid unmutilated winning tickets when such tickets are presented for payment during the course of the day when sold and for the period of 30 days thereafter. Subsequent thereto, the licensee shall have no liability relating to such tickets, providing the premises are conspicuously posted with signs stating that winning tickets must be presented for payment within 30 days from date of issuance, and that each ticket issue shall also bear a similar notation.

3. The licensee shall have no obligation or liability for tickets thrown away, lost, changed, destroyed, or mutilated beyond identification. In the case of mutilated tickets when the portions of the tickets presented are sufficient to definitely identify the ticket as a winning ticket, the licensee may accept the mutilated ticket and make payment without the necessity of the ticket holder submitting a claim to the board.

4. In the event of a dispute over the validity of a ticket, the licensee may accept from the holder of such ticket a written and verified claim to be filed by the licensee with the board, and the board will render a decision as to payment.

5. Every licensee shall carry on its books an account which shows the total payoff amount of outstanding unredeemed mutuel tickets representing winning tickets not presented for payment.

6. A payoff shall not be less than \$1.10 for each \$1.00 wagered; however, the tote boards shall indicate the amount due on each \$2.00 winning ticket.

7. The entire loss resulting from a minus pool shall be borne by the licensee.

(Adopted: 3/75.)

**26.270 Errors in posting.** Any error made in posting on the tote board of the payoff prices shall be promptly corrected, and the public immediately advised of the correction by announcement over a public address system.

(Adopted: 3/75.)

**26.280 Payment for errors.** If an error occurs in payment upon tickets cashed or entitled to be cashed, and as a result the pool involved is not correctly distributed among the winning ticket holders, the following shall apply:

1. The licensee shall bear the cost of any overpayment.
2. In the event of under-payment:
  - (a) The licensee shall accept timely claims, pay each claim, or a part thereof, which it determines to be valid; notice shall be given to any claimant whose claim is rejected.
  - (b) Any person whose claim is rejected by the licensee may, within 15 days from the date notice of rejection is received, request the board to determine the validity of the claim. The failure to file such request with the board within 15 days shall constitute a waiver of the claim, provided the claimant has received notice of a right of appeal to the board.
  - (c) A hearing before the board shall be held on each claim timely filed, and the board may determine a claim to be valid, in whole or in part, and thereafter order the licensee to make payment accordingly. Any such determination shall be final and binding on all parties.
  - (d) Claims not filed with the licensee within 30 days inclusive of the date on which the under-payment was discovered shall be deemed waived, and the licensee shall have no further liability therefor.

(Adopted: 3/75.)

#### MISCELLANEOUS

**26.290 Gaming employees.** All mutuel managers, ticket sellers and cashiers, money counters, runners and totalizator operators and programmers are deemed to be gaming employees and subject to the provisions of NRS 463.335 and 463.337.

(Adopted: 3/75.)

**26.300 Access to premises and records.** The commission and board and their agents, inspectors and employees have the authority:

1. To inspect and examine all premises where pari-mutuel betting is conducted and all premises where sporting events, races or games are held on which pari-mutuel betting is conducted.
2. To inspect and examine all equipment and supplies in, upon, or about such premises.
3. To summarily seize and remove from such premises and impound any such equipment or supplies for the purpose of examination and inspection.
4. To demand access to and inspect, make copies of, examine and audit all papers, books and records of applicants and licensees respecting the gross income produced by any pari-mutuel betting business, require verification of income, and all other matters affecting the enforcement of the policy of any of the provisions of these regulations.

(Adopted: 3/75.)

**26.310 Records and reports.** The licensee shall also provide such financial and other information and reports upon forms furnished by the board as the board may require from time to time.

(Adopted: 3/75.)

**26.320 Disciplinary actions.** Any pari-mutuel license is subject to suspension or modification and/or a fine imposed by the Nevada gaming commission in any case where any condition of the license has not been complied with or when any violation, law or regulation has occurred. Disciplinary actions shall be commenced and conducted in the same manner as disciplinary actions against gaming licensees under chapter 463 of the Nevada Revise Statutes.

(Adopted: 3/75.)

#### End – Regulation 26

EVIDENCE APPENDIX D  
COPY OF MINDES U.S. PATENT NO. 5,573,244

(x) Related Proceedings Appendix

None.